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15 || Plaintiff,

16

17 | NETFLIX, INC.,

18 || *Defendant.*

Case No. 4:22-cv-01490-JST

**NETFLIX, INC.'S MOTION FOR AN
ORDER TO SHOW CAUSE AND
SANCTIONS AGAINST PLAINTIFF'S
FORMER ATTORNEY, WILLIAM
RAMEY AND RAMEY LLP**

Date: May 8, 2025
Time: 2:00 PM
Place: Courtroom 6
Judge: Hon. Jon S. Tigar

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NOTICE OF MOTION AND MOTION

2 PLEASE TAKE NOTICE that on May 8, 2025 at 2 pm, in Courtroom 6, Second Floor,
3 United States District Court for the Northern District of California, Oakland Courthouse, 1301 Clay
4 Street, Oakland, CA 94612, Defendant Netflix, Inc. (“Netflix” or “Defendant”) moves for an order
5 to show cause as to why William Ramey and the Ramey LLP law firm should not be held in civil
6 contempt for failure to comply with the Court’s protective order (“Protective Order,” ECF No. 56)
7 and for sanctions. Netflix’s Motion is based on this Notice of Motion, the Motion, the memorandum
8 of points and authorities and declarations in support filed herewith, the Proposed Order filed
9 herewith, any additional pleadings and papers on file in this matter, and any arguments that may be
10 presented at the hearing.

STATEMENT OF RELIEF REQUESTED

12 Netflix seeks two categories of relief. First, Netflix requests an Order to show cause as to
13 why William Ramey and the Ramey LLP law firm (collectively “Ramey”) should not be held in
14 civil contempt for violating the Protective Order by providing Netflix’s protected confidential
15 (AEO) material to employees of AiPi, LLC, and/or an Order sanctioning William Ramey and
16 Ramey LLP for violating the Protective Order.

17 Second, Netflix requests discovery to permit Netflix and the Court to determine the full
18 scope of the breaches and to remediate them appropriately. Specifically, Netflix requests that Mr.
19 Ramey be ordered to:

20 • Produce all documents and communications between the Ramey LLP law firm and
21 current/former employees of AiPi (at all known email addresses) related to the *Valjakka v.*
22 *Netflix* matters. To the extent Mr. Ramey withholds specific documents and
23 communications on alleged privilege grounds, he shall prepare a privilege log that states,
24 at a minimum, the identities of all recipients of the document or communication, the subject
25 matter of any Netflix confidential information discussed in the document or
26 communication, and, where applicable, the Bates number(s) of the Netflix confidential
27 documents shared, summarized, or otherwise discussed with AiPi;

1 • Disclose the current contact information for each person presently or previously affiliated
2 with AiPi with whom employees of Ramey LLP communicated related to the *Valjakka v.*
3 *Netflix* matter, so that Netflix can contact them to ensure its confidential information has
4 not been further disseminated, and also ensure the individuals are not prosecuting patents
5 in violation of the prosecution bar in the Protective Order; and
6 • Appear for a half-day (3.5 hour) deposition concerning the communications between
7 Ramey LLP and current/former AiPi employees that include, relate to, or otherwise discuss
8 Netflix confidential materials.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Netflix recently learned that William Ramey and his law firm were not the lead counsel litigating Mr. Valjakka’s now-dismissed patent infringement claims. Mr. Valjakka contracted with an entity called AiPi, LLC to be responsible for all substantive legal work related to Mr. Valjakka’s litigation campaign, but he and Mr. Ramey only disclosed AiPi’s involvement to Netflix after two years of litigation, and even then, downplayed its role in the case. AiPi is not a law firm, but it is comprised largely of attorneys. Yet none of them ever appeared in the case to represent Mr. Valjakka.¹

No AiPi employees were authorized to receive Netflix’s confidential documents. But Valjakka’s nominal lead counsel, Mr. Ramey and his firm, ignored the Protective Order and, unbeknownst to Netflix, freely shared Netflix’s AEO materials (such as years of sensitive financial records) or summaries of those materials (e.g., in expert reports) with AiPi. Netflix does not yet know the full extent of the breach because it has only seen a small fraction of AiPi’s years of correspondence with Mr. Ramey about Mr. Valjakka’s litigation campaign, which Netflix obtained through a subpoena to AiPi in the Eastern District of Virginia.

Mr. Ramey maintains that this sharing of Netflix AEO information and source code was permitted because “they worked for me” and will not commit to providing further information regarding the scope or depth of the improper disclosure. Netflix thus has no choice but to seek the Court’s assistance to remedy Mr. Ramey’s wholesale disregard of the Protective Order.²

II. STATEMENT OF FACTS

A. Netflix Produced Sensitive Materials in Reliance on the Protective Order.

Netflix produced approximately forty documents under one of two confidentiality levels in the Protective Order: (1) CONFIDENTIAL or (2) HIGHLY CONFIDENTIAL – ATTORNEYS’

¹ This raises another issue, i.e., AiPi's undisclosed, unauthorized practice of law as Mr. Valjakka's counsel. Netflix will address that issue separately, at least in its forthcoming motion for attorneys' fees.

² If Mr. Ramey provides more information after Netflix files this motion, Netflix will update the Court accordingly.

1 EYES ONLY (“AEO”). These documents describe or comprise, for example, the technical
2 operation of the accused products and services, detailed non-public financial data for many years
3 of Netflix’s business, and Netflix’s license agreements with third parties. Declaration of Elise Edlin
4 in Support of Netflix, Inc.’s Motion for Order to Show Cause and Sanctions (“Edlin Decl.”), ¶5.
5 Netflix also made its source code available for inspection pursuant to the Protective Order’s
6 “HIGHLY CONFIDENTIAL AEO – SOURCE CODE” designation (“Source Code”). *Id.* The
7 Protective order is based on this District’s Model Order for Litigation Involving Patents, but
8 through “negotiations in good faith” between Mr. Ramey (for Mr. Valjakka) and counsel for
9 Netflix, the parties made “several modifications” in view of the “unique and complex nature of this
10 action.” *See* ECF No. 55 at 2. None of those modifications addressed AiPi or any of its employees.
11 *See id.*

12 The only persons affiliated with Mr. Valjakka permitted to review Netflix AEO and Source
13 Code material were Mr. Valjakka’s experts and “Outside Counsel of Record in this action,” which
14 the Protective Order defines as “attorneys who are not employees of a party to this action but are
15 retained to represent or advise a party to this action and have appeared in this action on behalf of
16 that party or are affiliated with a law firm which has appeared on behalf of that party.” Edlin Decl.,
17 Ex. A, ¶¶2.11, 7.3. The only outside counsel to appear for Mr. Valjakka while his claims were
18 pending are attorneys at the Ramey LLP law firm, including William Ramey and Susan Kalra, an
19 attorney named Erick Robinson, and attorneys at the Mahamedi IP Law firm.³ With respect to
20 Netflix CONFIDENTIAL material, the Protective Order also permitted review by certain “officers,
21 directors, and employees (including [in-h]ouse [c]ounsel)” of the plaintiff. Edlin Decl., Ex. A, ¶7.2.
22 But Plaintiff Mr. Valjakka is an individual and has no such officers, directors, or employees; and
23 even if he did, disclosure would only be allowed to those “to whom [it] is reasonably necessary for
24 this litigation” and who have also signed an undertaking to be bound by the terms of the Protective
25 Order. *See id.*

26 _____
27 ³ Late in the case, Joseph Zito of Whitestone Law filed a motion for admission *pro hac vice* in
28 order to appear for Mr. Valjakka. ECF No. 208. However, Mr. Zito voluntarily withdrew his
request for admission a few weeks later and would eventually appear in the case on behalf of
AiPi. *See* ECF Nos. 218 (notice of withdrawal of motion *pro hac*), 235-236.

1 **B. Mr. Valjakka and Ramey Never Disclosed That Attorneys at AiPi, LLC Were**
2 **Shadow Lead Counsel.**

3 Over two years into this case, Mr. Ramey told Netflix that attorneys at an entity called AiPi,
4 LLC were his “co-counsel.” ECF No. 216-3 at 5. At depositions shortly before and after, Mr.
5 Valjakka testified that AiPi was his litigation funder, but he did not call its attorneys his litigation
6 counsel. *See generally* ECF No. 216 (Netflix’s Motion to for an OSC to AiPI) at 3. And AiPi’s
7 attorneys refuted any role as outside counsel. *See generally* ECF No. 233-1. Regardless, Netflix
8 sought discovery from AiPi because the distribution of Mr. Valjakka’s litigation proceeds (in the
9 face of Netflix’s demand for fees) is at the heart of Netflix’s claim under the California Uniform
10 Voidable Transactions Act (“CUVTA”). But Netflix also sought discovery into AiPi’s unclear role
11 as Mr. Valjakka’s legal advisor. AiPi resisted this discovery at every step. Ultimately, Judge
12 Brinkema in the Eastern District of Virginia compelled AiPi to provide full and complete discovery
13 regarding its communications with Mr. Ramey about “material litigation decisions.” *See generally*
14 Edlin Decl., Exs. C (Netflix’s Motion for Contempt of Order Compelling Production Against AiPi
15 in Case No. 1:24-mc-00002-LMB-WEF) & D (January 27, 2025 Order on Netflix’s for Contempt).

16 That discovery established that AiPi was Mr. Valjakka’s primary counsel, with Ramey LLP
17 (an actual law firm) as the public face and counsel of record. Pursuant to their “Engagement
18 Agreement,” AiPi would perform “all drafting of documents, legal work, and research” for each of
19 at least six anticipated litigation campaigns (including Mr. Valjakka’s). *See* Edlin Decl., Ex. E at
20 1-2 & exhibit A thereto. In its “Litigation Plan” for Mr. Valjakka, AiPi further explains that it will
21 draft the complaint for an “acceptable US law firm” to file, and then do all “substantive” legal work
22 in each of Mr. Valjakka’s cases, including expressly against Netflix. Edlin Decl., Ex. F at 1.
23 Although AiPi ultimately did not perform *all* substantive legal work—at least because counsel of
24 record is required to appear at hearings, depositions, and on meet and confer calls—AiPi’s role was
25 so significant that it purportedly amassed thousands of documents from the Valjakka campaign
26 alone. *See* Edlin Decl., Ex. G, ¶10 (“based on [a] preliminary search for documents” by AiPi co-
27 founder Eric Morehouse, AiPi possessed “thousands of documents” responsive to Netflix’s
28 subpoena); Edlin Decl., Ex. H (AiPi’s Reply in Support of Motion to Quash Netflix’s Subpoena)

1 at 11 (AiPi's attorneys assert that five thousand responsive documents would be a "conservative
2 estimate"); *see also id.*, Ex. P at 1 (Mr. Ramey repeatedly emphasizing that AiPi's attorneys
3 "work[ed] for" him).

4 **C. What We Know (So Far) About the Netflix Protected Materials That Ramey
5 Provided to AiPi.**

6 While AiPi has not produced the "thousands of documents" from its legal work for Mr.
7 Valjakka, its court-ordered response to the EDVA subpoena to date confirms that Mr. Ramey
8 provided Netflix's confidential information to AiPi on multiple occasions. For example, on January
9 6, 2023, Mr. Ramey emailed AiPi attorneys Eric Lund and Eric Moorehouse. Edlin Decl., Ex. I.
10 The subject is "here are the Netflix financials," and the email attaches a copy of NFX_VALJ-
11 00007111, a spreadsheet produced by Netflix and designated AEO under the Protective Order. *See*
12 *id.*, ¶11 & Ex. I. The spreadsheet is a "master" financial report containing over seven years of
13 detailed profit and loss information across Netflix's various business lines and units. Edlin Decl.,
14 ¶11. Mr. Ramey asks that Messrs. Lund and Moorehouse "treat [it] as AEO," demonstrating his
15 knowledge that the information was protected. But that request does not absolve his violation of
16 the Protective Order given that neither recipient was permitted to receive AEO material. Edlin
17 Decl., Ex. I.

18 AiPi's productions confirm other violations:

19

- 20 • In December 2022, a paralegal from Ramey LLP sent Messrs. Morehouse and Lund
21 a two-gigabyte folder called "Netflix Production.zip." *See* Edlin Decl., Ex. J. By
22 then, Netflix had already produced sixteen Confidential and AEO documents. *Id.*,
23 ¶12. While it is not clear whether some or all of Netflix's production was included
24 in the folder (it appears to have been sent via separate file transfer system), AiPi
25 attorney Ken Sheets [REDACTED] *See* *id.*, Ex. J at 2 (describing
26 "document #6545"); *id.*, ¶12 (noting that NFX-VALJ-00006545 was produced
27 AEO);
- 28 • Also in December 2022, Mr. Lund sent Mr. Ramey supplemental infringement
contentions for the '102 asserted patent. *Id.*, Ex. K. Mr. Lund explained that [REDACTED] *See*
id. That same day, Mr. Valjakka served supplemental infringement contentions that
included complete copies of three Netflix AEO technical documents and a
discussion of their contents. *Id.*, ¶13;

- On July 5, 2023, Mr. Ramey sent Messrs. Morehouse, Lund, and Sheets a draft copy of the expert report of Robert Held regarding damages. *Id.*, Ex. L. That report (and particularly the exhibits, which Mr. Ramey also sent) reproduced Netflix's AEO financials and summarized AEO license agreements; and
- In September 2022, Mr. Sheets emailed Messrs. Lund, Ramey and Morehouse, attaching [REDACTED] *Id.*, Ex. M. The draft included a description of Netflix's AEO patent licenses and finances [REDACTED] *See id.*

Netflix did not produce copies of its Confidential or AEO documents to AiPi. Edlin Decl., ¶5. To the extent AiPi had the documents and used them to draft work product for Mr. Valjakka, they could only have come from Ramey (as in the above examples) or another of Mr. Valjakka's outside counsel.

Netflix also understands that AiPi employees were privy to information contained in Netflix's Source Code. In one email, Mr. Morehouse [REDACTED] [REDACTED].⁴ In another, Mr. Ramey asked the AiPi attorneys [REDACTED] [REDACTED]. *See* Edlin Decl., Ex. O.

D. Mr. Ramey Prevents Netflix from Ascertaining the Full Extent of His Protective Order Violations.

Netflix first learned that Mr. Ramey emailed its sensitive financial data to AiPi when AiPi produced documents to Netflix on December 27, 2024. Edlin Decl., ¶18 & Ex. P at 6-7. On December 30, Netflix notified Mr. Ramey and counsel for AiPi of the Protective Order violation and invited them to explain the disclosure of Netflix's AEO information. *See id.*, Ex. P at 6-7. Mr. Ramey did not respond. *See id.*, ¶18.

Netflix then discovered further apparent violations on an AiPi privilege log and emailed Mr. Ramey again on January 21, 2025. *Id.*, Ex. P at 4-6. So that Netflix could assess and attempt to remediate, it requested that Mr. Ramey produce and/or log his emails with AiPi. *See id.* at 5. Mr. Ramey refused. *Id.* at 3-4. He suggested that the AEO financial email was a one-off "error," but

⁴ [REDACTED]

See Edlin Decl., Ex. N at 2.

1 also tried to justify broader disclosure on the basis that Messrs. Morehouse, Lund, and Sheets
2 “worked for [him] on the NFX case” and were “lawyers for Valjakka.” *See id.* According to Mr.
3 Ramey, “[n]o document was given to AiPi as a separate entity.” *See id.* After Netflix provided Mr.
4 Ramey with specific examples of him violating the Protective Order, he abandoned inadvertent
5 disclosure and doubled-down on the idea that that disclosure was proper because Messrs.
6 Morehouse, Sheets, and Lund “work[ed] for” him. *See id.* at 1. Mr. Ramey never asserted that any
7 of the AiPi attorneys were admitted in this district or have appeared in this case for Mr. Valjakka.

8 During a telephonic meet-and-confer, Mr. Ramey suggested he would have no issue
9 promptly producing Netflix’s discovery; but days later, he about-faced and refused to commit. *See*
10 Edlin Decl., Ex. Q. He maintained that he had disclosed AiPi attorneys by “late 2023” (i.e., after
11 summary judgment motions had been filed), as if to suggest Netflix should have assumed then that
12 Mr. Ramey was improperly sending them Netflix’s protected information. *See id.*

13 **III. LEGAL STANDARDS**

14 **A. Civil Contempt**

15 Courts have the “inherent power to enforce compliance with their lawful orders through
16 civil contempt.” *Spallone v. United States*, 493 U.S. 265, 276 (1990) (citation omitted). An order
17 of civil contempt is warranted where “(1) [the party] violated [a] court order, (2) beyond substantial
18 compliance, (3) not based on a good faith and reasonable interpretation of the order, (4) by clear
19 and convincing evidence.” *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693,
20 695 (9th Cir. 1993). “The contempt need not be willful, and there is no good faith exception to the
21 requirement of obedience to a court order.” *Id.* (cleaned up). “Civil contempt sanctions are
22 employed for two purposes: (1) to coerce compliance with a court’s order; and (2) to compensate
23 the complainant for the losses sustained.” *In re Search of Content Stored at Premises Controlled*
24 *by Google Inc.*, No. 16-mc-80263-RS, 2017 WL 4700056, at *1 (N.D. Cal. Oct. 19, 2017) (citing
25 *United States v. United Mine Workers of Am.*, 330 U.S. 258, 303-04 (1947)).

26 In an application for an order to show cause, the moving party must cite the Court-ordered
27 provisions at issue and allege that the non-moving party has not complied with those provisions.
28 *Reynolds v. Roberts*, 207 F.3d 1288, 1298 (11th Cir. 2000). “If [the court is] satisfied that the

1 [complainant]’s motion states a case of non-compliance, the court orders the [non-moving party]
2 to show cause why he should not be held in contempt and schedules a hearing for that purpose.”
3 *Id.; LifeScan Scot., Ltd. v. Shasta Techs, LLC*, No. 11-cv-04494-WHO, 2013 WL 4604746 (N.D.
4 Cal. Aug. 28, 2013) (ordering plaintiff to show cause regarding violations of protective order where
5 it used confidential information obtained in litigation to send cease-and-desist send letters to
6 defendant’s customers).

7 A court has “wide latitude in determining whether there has been contemptuous defiance of
8 its order.” *Gifford v. Heckler*, 741 F.2d 263, 265-66 (9th Cir. 1984).

9 **B. Sanctions for Discovery Order Violations**

10 Courts are authorized under Federal Rule of Civil Procedure 37 to impose sanctions against
11 litigants and their attorneys for violating protective orders. *See Falstaff Brewing Corp. v. Miller*
12 *Brewing Co.*, 702 F.2d 770, 783 (9th Cir. 1983). Federal Rule of Civil Procedure 16, which
13 references Rule 37, also provides courts with such authority. Fed. R. Civ. P. 16(f) (authorizing
14 courts to “issue any just orders … if a party or its attorney … fails to obey a scheduling *or other*
15 pretrial order” (emphasis added)).

16 “Sanctions are permissible under Rule 37 when a party fails to comply with a court order,
17 regardless of the reasons.” *Life Techs. Corp. v. Biosearch Techs., Inc.*, No. C-12-00852-
18 WHA(JCS), 2012 WL 1600393, at *8 (N.D. Cal. May 7, 2012); *see also Yeti by Molly, Ltd. v.*
19 *Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001) (when requested sanction is less than
20 dismissal, moving party is not required to prove “bad faith or willfulness.”). If the Court finds that
21 a party or their attorney violated a protective order without substantial justification, then the
22 payment of attorneys’ fees and costs is a mandatory part of any sanctions award, and additional
23 sanctions are within the Court’s discretion. Fed. R. Civ. P. 37(b)(2)(A), (C); *see also Holley v.*
24 *Gilead Scis., Inc.*, No. 18-cv-06972-JST, 2021 WL 940594, at *2 (N.D. Cal. Mar. 12, 2021) (Rule
25 37 sanctions “may serve either remedial and compensatory purposes or punitive and deterrent
26 purposes.”) (citation omitted).

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1 **IV. ARGUMENT**

2 **A. Mr. Ramey Should be Ordered to Show Cause Because He Violated the**
3 **Court's Protective Order.**

4 The governing Protective Order unambiguously restricts a party who receives confidential
5 information from disclosing that information beyond “the categories of persons and under the
6 conditions described in this Order.” Edlin Decl., Ex. A, ¶7.1. In particular, AEO materials can only
7 be provided to outside counsel who are “Outside Counsel of Record,” which means they “have
8 appeared in this action” or “are affiliated with a law firm which has appeared on behalf” of a party
9 in the action. *See id.*, ¶¶7.3(a), 9.2(a) & 2.11. AiPi’s attorneys never appeared in the action, are not
10 barred in California, and are not “affiliated” with either of the law firms that appeared for Mr.
11 Valjakka while his claims were pending (Ramey LLP and Mahamedip IP). And while Netflix’s
12 Confidential material could have additionally been shown (under certain positions) to a plaintiff’s
13 “officers, directors, and employees,” Mr. Valjakka as an individual has none. *See id.*, ¶¶7.2(a)-(b)
14 & 2.11. Because AiPi’s employees do not fall into any of the categories of persons who can receive
15 Netflix’s Protected Material, Mr. Ramey violated the Protective Order by disclosing Netflix’s
16 confidential information to them. Edlin Decl., Ex. I. And each time Mr. Ramey sent and/or
17 discussed other Netflix confidential material in Mr. Valjakka’s infringement and damages
18 contentions and expert reports, he violated the Protective Order again. *See supra*, Section II.C.

19 Under similar circumstances, courts in this Circuit will grant orders to show cause—if not
20 find contempt outright. *See, e.g., In re Banc of Cal. Sec. Litig.*, No. 17-cv-118, 2024 WL 4597254,
21 at *7 (C.D. Cal. Sept. 30, 2024) (law firm in contempt of protective order for providing client with
22 copy of expert report that “repeatedly cited to [AEO] information”); *OmniGen Rsch., LLC v. Wang*,
23 No. 6:16-cv-268-MC, 2018 WL 11512767, at *10-11 (D. Or. Nov. 6, 2018) (finding “clear and
24 convincing” evidence of contempt where attorney improperly forwarded to client document
25 productions and expert report containing AEO information of opposing party); *Systemic Formulas,*
26 *Inc. v. Kim*, 2009 WL 5205995, at *1-2, 4 (D. Utah Dec. 23, 2009) (finding contempt against
27 attorney who provided client with list of information derived from AEO material).

28

1 Because Netflix has demonstrated that Mr. Ramey violated specific provisions of the
2 Protective Order, the Court should shift the burden to Mr. Ramey to justify his breaches. But the
3 Court should afford Mr. Ramey no deference because *he negotiated* the provisions of the Protective
4 Order that he subsequently (and repeatedly) breached. *See Clarke v. First Transit, Inc.*, No. 07-CV-
5 6476 GAF (MANx), 2012 WL 12877865, at *12 (C.D. Cal. Nov. 2, 2012) (“a party who participates
6 in drafting the order should do so with an understanding of what it can reasonably accomplish.”)
7 (*quoting* Moore’s Fed. Practice, Civil § 37.51 (Matthew Bender, 2012 ed.)) If Mr. Ramey wanted
8 shadow lead counsel at AiPi to have access to Netflix’s confidential information, he could have
9 negotiated access directly into the Protective Order.⁵ Or if he had doubts about AiPi’s ability to
10 review the information under the Protective Order terms, he could have raised the issue with Netflix
11 or sought relief from the Court to modify the Protective Order at any point during the eighteen
12 months between the issuance of the Protective Order and dismissal of Mr. Valjakka’s claims.
13 Instead, Mr. Ramey withheld AiPi’s role while he repeatedly fed them Netflix’s Highly
14 Confidential documents.⁶

15 **B. Ramey’s Misuse of Netflix’s Confidential Information Warrants Monetary
16 Sanctions Under Rule 37.**

17 Regardless of the outcome on contempt, Mr. Ramey’s conduct is also sanctionable under
18 Rule 37. *See, e.g., Holley*, 2021 WL 940594, at *1-2 (sanctioning party for “incorrectly” filing
19 confidential documents on public docket); *Life Techs.*, 2012 WL 1600393, at *9-10 (sanctioning
20 party for “inadvertently” disclosing AEO information to client); *see also LifeScan*, No. 11-cv-
21 04494-WHO, 2013 WL 5949629, at *3-4 (N.D. Cal. Nov. 6, 2013) (declining to find contempt

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24 ⁵ This is exactly what Netflix did when it identified certain Valjakka AEO documents that it wanted
25 its in-house counsel to be able to review prior to mediation. *See* Edlin Decl., Ex. B (order granting
26 stipulation among parties to amend the Protective Order and permit Netflix’s in-house counsel to
27 access enumerated Valjakka AEO documents) (ECF No. 120).

28 ⁶ Because this Motion seeks an order to show cause, Netflix does not address its entitlement to fees.
29 If the Court eventually finds Mr. Ramey in contempt, then Netflix should be awarded its “actual
30 losses” from Mr. Ramey’s contempt, which the at least its attorneys’ fees and costs it has (and will
31 continue to) expend to address his violations, including motion practice. *See, e.g., United States v.*
Nat'l Med. Enterprises, Inc., 792 F.2d 906, 910 (9th Cir. 1986).

1 where party in violation had “good faith and reasonable interpretation” justifying noncompliance
2 but finding conduct “still sanctionable” as a failure to obey the protective order).

3 While it is within the Court’s discretion to craft a sanction that is “punitive and deterrent”
4 in nature, *see Falstaff*, 702 F.2d at 783, Netflix is entitled at a minimum to compensatory sanctions,
5 i.e., “reasonable, expenses, including attorney’s fees, caused by” Ramey’s breach. Fed. R. Civ. P.
6 37(b)(2)(A), (C). Netflix’s expenses caused by the breach are thus far limited—a few
7 (unsuccessful) attempts to seek Ramey’s compliance, review of a few small document productions
8 and a privilege log, and drafting this Motion. But Netflix expects it will occur significant additional
9 expense investigating and remediating the breach through reviewing the voluminous record of
10 Ramey’s and AiPi’s communications and contacting persons who unlawfully accessed Netflix’s
11 confidential information. For that reason, Netflix asks that the Court permit it to submit a final
12 itemized bill of costs and fees with an explanation for their reasonableness after it has an
13 opportunity to complete its investigation (an approach that is typical in contempt proceedings,
14 which this Motion also seeks to initiate). *See, e.g., Apple, Inc. v. Samsung Elecs. Co.*, No. 5:11-cv-
15 01846-LHK(PSG), 2014 WL 12596470, at *9-10 (N.D. Cal. Jan. 29, 2014) & *id.*, 2014 WL
16 2854994, at *1 (Jun. 20, 2014); *Silicon Genesis Corp. v. EV Grp. E. Thallner GmbH*, No. 22-cv-
17 04986-JSC, 2023 WL 6882749, at *4 (N.D. Cal. Oct. 18, 2023) & *id.*, 2024 WL 1643677, at *1
18 (Apr. 15, 2024).

19 **C. The Court Should Order Ramey to Provide Discovery into What Appears to
20 be Many Other Protective Order Violations.**

21 Whether viewed as part of a contempt proceeding or as one type of sanction under Rule 37,
22 Courts permit discovery to determine the extent of a non-moving party’s sanctionable conduct. *See*
23 *generally Cardell Fin. Corp. v. Suchodolski Assocs., Inc.*, 2012 WL 12932049, at *57-60 (S.D.N.Y.
24 July 17, 2012) (collecting cases from “[a] number of courts [that] have referenced the use of
25 discovery in contempt proceedings or similar circumstances in which the issue to be determined
26 was whether or not a violation of an order had occurred.”) For example, in the *Apple v. Samsung*
27 litigation, the Court ordered discovery from Samsung to allow Apple to investigate the extent of
28 Samsung’s distribution of an AEO-laden expert report within its organization and to other outside

1 counsel. *See, e.g., Apple v. Samsung*, No. 5:11-cv-01846-LHK, 2013 WL 9768650, at *2-3 (N.D.
2 Cal. Oct. 2, 2013); *aff'd* 2013 WL 5693759 (Oct. 15, 2013). While Samsung offered to provide a
3 “log of documents associated with the transmission[] of the” report, the Court recognized that this
4 limited information would not address the litany of unanswered “basic questions” about the
5 disclosure: To whom? When? For what purpose? *See id.* As such, the Court ordered Samsung to
6 produce documents and communications within an eighteen-month window from every Samsung
7 employee who received the confidential information and produce at least six employees to sit for a
8 deposition. *See id.*

9 Here, because Mr. Ramey also refuses to provide Netflix with answers to the “basic
10 questions,” discovery is warranted. AiPi and its employees were previously found to be outside of
11 the jurisdiction of this Court (*see* ECF No. 284 at 8)⁷ and have not signed an undertaking
12 committing themselves to the Protective Order, so they have no apparent obligation to keep the
13 information confidential.⁸ Netflix needs to know who had access to what to ensure that information
14 is safe. Indeed, because Netflix’s AEO and Source Code are so sensitive, the parties agreed to a
15 prosecution bar that applies to “*any individual* who receives access” to those materials. Edlin Decl.,
16 Ex. A, ¶8 (emphasis added). But the bar cannot serve its purpose—“to mitigate the risk of
17 inadvertent use of confidential information learned in litigation”—if all current and former
18 employees of AiPi are not bound by it. *See generally EPL Holdings, LLC v. Apple Inc.*, No. C-12-
19 04306-JST(JSC), 2013 WL 2181584, at *4 (N.D. Cal. May 20, 2013). And even if they were,
20 Netflix could not police their prosecution activity because it does not know who they are. AiPi
21 employs patent attorneys, patent agents, scientists, and inventors, all of whom are likely (if not
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23

24 ⁷ Netflix respectfully contends that the recent discovery from AiPi demonstrates that AiPi has
25 availed itself of this Court’s jurisdiction. *See supra*, Section II.B-C.

26 ⁸ After Netflix alerted AiPi to the Protective Order violations, Mr. Morehouse promised (on behalf
27 of AiPi) to “be bound by the terms of [the Protective Order]” and made additional promises about
28 his own use of Netflix’s protected information. Edlin Decl., Ex. R at 3. But Mr. Morehouse made
no promises about improper use of Netflix’s protected information in the more than two years since
it received them and makes no promises about what AiPi’s now-former employees are doing to
protect Netflix’s information. And nobody affiliated with AiPi has signed the undertaking attached
to the Protective Order.

1 necessarily) involved in patent prosecution activities. *See* Edlin Decl., Ex. F (introducing “[k]ey
2 members of AiPi’s team” to Mr. Valjakka).

3 The discovery Netflix requests is narrowly tailored to provide answers to the “basic
4 questions” that will allow Netflix to protect its confidential information: Who received it? What
5 did they receive? How can Netflix communicate with them to ensure additional breaches of the
6 Protective Order have not and will not occur?

7 **V. CONCLUSION**

8 For the reasons stated above, Netflix requests the Court grant Netflix’s requested relief.

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Respectfully submitted,

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